BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFOR

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Application of SOUTHERN CALIFORNIA EDISON COMPANY (U 338 E) for Approval of Economic Development Rates.	Application 04-04-008 (Filed April 5, 2004) (Rehearing Granted May 25, 2006)
Application of PACIFIC GAS AND ELECTRIC COMPANY to Modify the Experimental Economic Development Rate (Schedule ED). (U 39 E)	Application 04-06-018 (Filed June 14, 2004) (Rehearing Granted May 25, 2006)
Application of SOUTHERN CALIFORNIA GAS COMPANY (U904G) for Approval of Long-Term Gas Transportation Agreement with Guardian Industries Corp.	Application 05-10-010 (Filed October 7, 2005) (Discount Issues)

SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) REPLY TO OTHER PARTIES' COMMENTS IN RESPONSE TO ADMINISTRATIVE LAW JUDGE'S RULING REGARDING ORDER GRANTING LIMITED REHEARING OF DECISION 05-09-018 REGARDING THE FLOOR PRICE FOR EDR

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REPLY TO OTHER PARTIES' COMMENTS IN RESPONSE TO ADMINISTRATIVE LAW JUDGE'S RULING REGARDING ORDER GRANTING LIMITED REHEARING OF DECISION 05-09-018 REGARDING THE FLOOR PRICE FOR EDR

SUBJECT INDEX

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I. INTRODUCTION

Pursuant to Decision (D.) 06-05-042 and the ADMINISTRATIVE LAW JUDGE'S RULING REGARDING ORDER GRANTING LIMITED REHEARING OF DECISION 05-09-018 REGARDING THE FLOOR PRICE FOR EDR, dated June 22, 2006, Southern California Edison Company (SCE) respectfully replies to other parties' comments.

SCE replies herein to comments filed jointly by the Merced and Modesto Irrigation Districts (Districts) and those filed jointly by the Commission's Division of Ratepayer Advocates, the Utility Reform Network, Aglet Consumer Alliance, Consumer Federation of California, Utility Consumers Action Network, National Consumer Law Center, Greenlining Institute, Latino Issues Forum, Disability Rights Advocates, California Citizens for Health Freedom and the Environmental Center of San Luis Obispo (Coalition).

II. DISCUSSION

A. The Fact That A Utility Has Chosen To Fund A Portion Of A Rate Discount Does Not Lead To The Conclusion That Utilities Can Be Compelled To Do So

The Districts cite Pacific Gas and Electric Company's (PG&E's) shareholder-funded economic development grant program as evidence that utility shareholders must benefit from such programs and therefore should be required to fund the programs at issue here.[1] This would be a compelling argument, if only it were on point. The mere fact that a utility's shareholders may choose to fund a program does not support a conclusion that those shareholders can be compelled to do so. Unlike the example cited by the Districts, SCE has maintained throughout this proceeding that it is only willing to engage in these economic development programs if they are ratepayer funded.[2]

Public Utilities Code §740.4(h) expresses the California Legislature's intent that the Commission allow rate recovery of expenses and discounts supporting economic development programs to the extent the utility proposing such programs demonstrates that ratepayers derive a benefit from such programs.[3] Furthermore, a fundamental ratemaking principle is that: "Under cost-of-service regulation, the utility is entitled to all of its reasonable costs and expenses, as well as the opportunity to earn a rate of return on the utility's rate base."[4] A Commission order requiring utility shareholders, against their will, to fund an economic development program that benefits ratepayers would violate both §740.4 and cost-of-service ratemaking principles and would amount to a taking without just compensation.

B. The Shareholder Benefit Issue Was Not Raised In The Application For Rehearing, So Any Commission Reconsideration Of That Issue Must Arise Under §1708, Not §1736

The Districts argue:

> Since [utility] shareholders benefit from customer retention spurred by the [Economic Development] rate, it is only fair for shareholders to bear some of the burden. They can

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1 Comments of Merced Irrigation District and Modesto Irrigation District, p. 5.

2 See, e.g., SCE opening brief, p. 25.

3 CAL. PUB. UTIL CODE §740.4(h).

4 *Re Pacific Gas & Electric Co.,* D.03-02-035, [mimeo], p. 6, (*emphasis added*), 2003 Cal. PUC LEXIS 93.

> do that by either complete or partial funding of the cost shift – that is, by either complete or partial funding of the discount.[5]

The issue of shareholder funding of the EDRs is not within the scope of this application for rehearing. This issue has already been extensively litigated in this proceeding and was resolved in Decision (D.) 05-09-018. However, when the Commission granted rehearing of D.05-09-018, it mingled an issue that had been preserved for rehearing (the floor price) with an issue that had not (shareholder benefit). The issue of shareholder benefits was not raised in Aglet's application for rehearing of D.05-09-018,[6] but was instead raised by the Commission *sua sponte* when it granted rehearing of that decision. The Commission does have the authority to reopen a prior decision under Public Utilities Code §1708, but that is an extraordinary remedy that must be exercised with great care to preserve the settled expectations of the parties.[7] Also, unlike rehearing under §1736, which prevents the decision under consideration from becoming final, decisions reopened under §1708 have already become final, so any changes granted through a reopening must be prospective only. The California Supreme Court explained the difference between reopening and rehearing in its 1975 opinion in *City of Los Angeles v. Public Utilities Commission*:

> The key to the distinction between the two cases lies in the difference in the commission's power, on one hand, to *reopen* proceedings already final, and, on the other, to *rehear* a decision not yet final. In ***City of Los Angeles*** we annulled the tariff in

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[5] Comments of Merced Irrigation District and Modesto Irrigation District, p. 5. The Coalition parties argue for a somewhat more limited shareholder responsibility: "[S]hareholders should be allocated the costs of any undercollection of nonbypassable charges provided to EDR customers." Comments of DRA, et al., p. 35.

[6] JOINT APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY AND SOUTHERN CALIFORNIA EDISON COMPANY FOR REHEARING OF DECISION 06-05-042, filed June 26, 2006.

[7] See *Re Pacific Gas and Electric Co.,* Decision No. 92058, 1980 Cal. PUC LEXIS 785, pp. 23-24; 4 CPUC2d 139:

> By its very nature, Section 1708 provides the possibility of an extraordinary remedy. Res judicata principles are among the most fundamental in our legal system, protecting parties from endless relitigation of the same issues. Section 1708 represents a departure from the standard that settled expectations should be allowed to stand undisturbed. Our past decisions recognize that the authority to reopen proceedings under Section 1708 must be exercised with great care and justified by extraordinary circumstances. See *Golconda Utilities Co*. (1968) 68 CPUC 296; *Application of Southern Pacific* (1969) 70 CPUC 150; *Southern Pacific Transp. Co.* (1973) 76 CPUC 2. Particularly where, as here, one or more parties have relied on decisions granting authority to construct a major generating facility, with substantial investments of time, money, and other resources in accordance with the terms therein, reopening can be justified only under the most compelling circumstances.

> See also, *Re Southern California Gas Co.,* Decision 03-10-057, 2000 Cal. PUC LEXIS, 1149, p. 26, citing *Re United Parcel Services, Inc.* (1997) 71 CPUC 2d 714, 719; Cal. PUC LEXIS 427, citing *Application of Southern Pacific Co.* (1969) 70 CPUC 150, 152, *Cal Manufacturers Assn. v. Cal. Trucking Assn*. (1991) 72 CPUC 442, 445, and *Winton Manor Mutual Water Co.* (1978) 84 CPUC 645, 651:

> We have also articulated specific parameters for this authority, stating in several decisions that we "may only modify or rescind a decision if (1) new facts are brought to the attention of the Commission, (2) conditions have undergone a material change, or (3) the Commission proceeded on a basic misconception of law or fact."

> question, in spite of the fact that the commission had *reopened* rate proceedings under Public Utilities Code section 1708. That section … permits the commission at any time to reopen proceedings even after a decision has become *final*, as the commission decision in ***City of Los Angeles*** would have been had we not annulled. (***City of Los Angeles*** v. ***Public Utilities Commission,*** *supra*, 7 Cal.3d 331.)
> …
> The difference in effect stems from the difference between Public Utilities Code section 1736, which provides for an order on *rehearing*, and section 1708 which provides for *reopening*. The former procedure, which must take place within the time limits specified in section 1731, and only in response to parties' requests, contrasts with the latter, which is merely a general authority for the commission to reconsider something upon which it has previously ruled. Rehearing, unlike reopening, prevents an order previously made from becoming final. (See *Sale* v. *Railroad Commission* (1940) 15 Cal.2d 612, 616 [104 P.2d 38].) Because the commission *reheard* the General case, its order did not become final, and it could promulgate an interim rate subject to refund.[8]

As the Supreme Court stated in *City of Los Angeles*, rehearing "must take place within the time limits specified in section 1731, and only in response to parties' requests." Since the issue of shareholder benefit was not raised in the application for rehearing of D.05-09-018, it is not within the Commission's rehearing authority. While the Commission does have the authority to reopen D.05-09-018 to reconsider the shareholder benefit issue, its statutory authority and the standard of review for rehearing differs from a rehearing. D.06-04-042, the decision granting rehearing of D.05-09-018, did not observe this distinction. The shareholder benefit and contribution issue is not within the scope of the Commission's rehearing authority and should not be addressed here.

C. The Commission Should Make a Clear Distinction between the Establishment of the EDR Floor Price and the Payment or Discount of Non-bypassable Charges

SCE agrees with the Coalition that non-bypassable charges should not be discounted. In SCE's accounting for the incremental EDR revenues the non-bypassable charges are fully funded first, with the discounts reflected in reduced contributions to the generation and distribution components. PG&E's practice may differ.

The Commission can establish the floor price anywhere above the sum of the non-bypassable charges. If this overall rate were to fall below total marginal costs, then the Coalition's position is correct – other ratepayers would indeed pay a customer to continue buying its energy in California.[9] However, the Coalition overlooks the fact that any contribution to the non-bypassable charges made by

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[8] See *City of Los Angeles, et al. v. Public Utilities Commission* (1975), 15 Cal. 3d 680, p. 707; 542 P.2d 1371; 125 Cal. Rptr. 779; 1975 Cal. LEXIS 262.

[9] Comments of DRA, et al, p. 36.

a customer that would otherwise leave the state is essentially equivalent to a contribution to margin. This is because absent the EDR discount, the customer would not remain in California and the revenue it would otherwise contribute would be lost. In other words, as long as the EDR rate exceeds total marginal cost as defined by D.05-09-018, other ratepayers are better off if the EDR customer at least pays a discounted bill rather than shutting down or leaving the state. Obtaining full tariffed revenues from customers who are closing or leaving California is not an option, and the EDR maximizes collection of nonbypassable charges by retaining incremental revenues. The Commission can resolve the issue of not discounting the non-bypassable charges by maintaining its existing floor definition, but requiring the non-bypassable charges to be paid first as is SCE's current practice. While this could result in some negative margin for some distribution and generation components, this is well within the Commission's discretion and results in an overall ratepayer benefit.

SCE is concerned, as is PG&E,[10] that the level of discounts afforded to DA customers as a result of providing a discount based on generation services may drive EDR-discounted revenue well below a floor that includes non-bypassable charges. If the Commission's primary concern with the current floor definition is to avoid any possibility of discounting non-bypassable charges, SCE proposes the Commission: (1) establish a minimum bill provision for EDR customers equal to the sum of the non-bypassable charges; and, (2) direct that EDR revenues go first to pay the non-bypassable charges, with other revenues allocated to remaining charges pro rata.

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[10] Comments of PG&E, p. 3.

III. CONCLUSION

SCE respectfully asks the Commission to render a decision consistent with this reply and SCE's comments filed August 1, 2006.

Respectfully submitted,

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August 22, 2006

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of **SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) REPLY TO OTHER PARTIES' COMMENTS IN RESPONSE TO ADMINISTRATIVE LAW JUDGE'S RULING REGARDING ORDER GRANTING LIMITED REHEARING OF DECISION 05-09-018 REGARDING THE FLOOR PRICE FOR EDR** on all parties identified on the attached service list(s). Service was effected by one or more means indicated below:

Transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.

Executed this 22nd **day of August, 2006**, at Rosemead, California.

/s/

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